IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8555 OF 2004

Shri Chandrakant Anna Kulkarni and others ... Petitioners

v/s

Nathu Dagadu Salunkhe and ors. ... Respondents

Ms S.S. Mogre for Petitioners.

Mr Shiv Motariya for Respondent Nos.1 and 2.

CORAM : D.K. DESHMUKH J.

DATE : 20TH JULY 2005.

P.C. :-

1. By the impugned order, the Trial Court has taken the written statement of the defendant Nos.1 and 2 on record for the reasons which were disclosed in the application filed by the defendant No.1. It is submitted that in view of the amendment in the Civil Procedure Code, a written statement filed after the period mentioned in the C.P.C. can be taken on record only in extraordinary circumstances. Now what are the extraordinary circumstances will defer from case to case and the Court will have to be satisfied about instances of extraordinary circumstances in a particular case. Long and short of the matter is that the order whether to take written statement on record or not is in the discretion of the Court. In the present case, the Trial Court for the reasons disclosed by the defendant Nos.1 and 2 in the application has exercised discretion by taking written statement on record. Firstly, because this is an order in the discretion of the Court, it cannot be interfered with by the writ Court. Secondly, as a consequence of the order is that the written statement of defendant Nos.1 and 2 has come on record and therefore, an opportunity is created to decide the suit on merits. It cannot be said that the impugned

order has resulted in injustice. Therefore, even if it is found that the order impugned is not strictly in accordance with law, this Court does not find it necessary to interfere with the order impugned.

Petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.